

Appl. No. : 10/802,156  
Amdt. Dated: April 8, 2008  
Reply to Office Action of October 11, 2007

**RECEIVED**  
**CENTRAL FAX CENTER**  
**APR 08 2008**

### REMARKS

Claims 1-17 were originally pending in the present application. Claims 2 and 8-17 have been cancelled, leaving Claims 1 and 3-7 pending and at issue. Of the remaining claims, Claims 1 and 7 stand rejected under 35 USC 102(b) as anticipated by U.S. Patent No. 5,476,187 to Marisco and Claims 1 and 3 stand rejected under 102(b) as anticipated by U.S. Patent No. 5,836,553 to Bergaila. Claims 1 and 3-7 also stand rejected under 35 USC 103(a) as unpatentable over U.S. Patent No. 5,119,957 to Joyce-Middaugh in view of Marisco and Bergaila.

Claim 1 has been amended to further clarify the distinguishing features of the present invention over the cited art. Applicant contends that Claim 1 is patentable over the cited art and requests reconsideration.

#### Amended Claim 1

Claim 1 requires a sidewall having an upper rim. Further, "a surface integral and projecting from the sidewall" is also a required element. A "locking portion" is confined to the surface (see FIGS. 1 and 2) as is the recess it defines. Neither component contacts the adjacent "upper rim" of the sidewall. Finally, the claimed surface also includes "a locking member having a bag-retaining notch" (see FIG. 7) and which moves between a release and locking position. The notch of the locking member is "entirely within the recess, and below the surface" when the locking member is in the locking position (see FIG. 2). The locking member does not contact the upper rim.

#### Cited References

Marisco is cited to disclose a trash receptacle comprised of a sidewall defining a bag receiving area. The Examiner contends that the container includes "a surface [which] projects

Appl. No. : 10/802,156  
Amdt. Dated: April 8, 2008  
Reply to Office Action of October 11, 2007

from the sidewall” and has a “grooved section 14 [which] defines a locking portion defining a recess, a locking member (retainer 16) having a bag receiving notch (concave portion 38) [which] is carried by the locking portion when inserted therein as shown in Fig. 2B and 3 in a locking position, [and] a release position is shown in Fig. 2A.”

However, the upper rim of Marisco defines the locking portion and the upper edge of the recess. The “surface” of Marisco—or at least what the Applicant believes the Examiner is calling the surface—defines the bottom of the recess. It is clear the locking portion is not confined to the surface without contacting the upper rim. Likewise, the locking member 16 of Marisco is not carried on the surface, nor does it avoid contact with the upper rim. In fact, the opposite is true. The cited locking member is carried on the upper rim and avoids contact with the “surface”. Further, the notch of locking member 16 does not reside below the “surface” when in the locking position.

Accordingly, Claim 1 distinguishes over Marisco. Reconsideration of the rejection is respectfully requested.

As to Bergaila, the argument is the same as that for Marisco. That is, the locking portion and the locking member are both in contact with the upper rim of the sidewall. The present invention gives the user a single point in which to gather and lock the bag in place. Conversely, both Marisco and Bergaila require a complete circumferential length in which a bag must be captured by the locking member within the recess. Holding a bag within such a large opening can be difficult if the bag keeps slipping downward as you attempt to lock the member in place.

Finally, the Joyce-Middaugh reference also fails to provide a single locking portion and locking member, both of which are positioned on a surface and do not contact the container rim.

Appl. No. : 10/802,156  
Amdt. Dated: April 8, 2008  
Reply to Office Action of October 11, 2007

Absent disclosure of these features, the references can not be said to anticipate or render obvious the present claims.

Accordingly, all claims are considered to distinguish over the cited references and to be in condition for allowance. Reconsideration of the rejections, in light of the aforesaid amendments and present remarks, is respectfully requested. The present amendments have been entered for the purpose of placing the application into a proper condition for allowance.

Appl. No. : 10/802,156  
Amdt. Dated: April 8, 2008  
Reply to Office Action of October 11, 2007

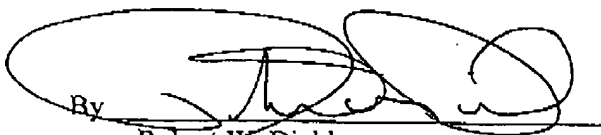
**RECEIVED**  
**CENTRAL FAX CENTER**  
**APR 08 2008**

**CONCLUSION**

Claims 1 and 3-7 remain pending in the present application. Claim 1 has been amended to clarify distinguishing features of the present invention over the cited art. No new matter has been added. Applicant contends that all remaining claims are in condition for allowance.

Should any formalities remain which can be corrected by Examiner's amendment, Applicant requests that the undersigned be contacted by phone in order to expedite the prosecution of the present case.

Respectfully submitted,

By 

Robert W. Diehl  
PTO Reg. No. 35,118  
Seyfarth Shaw LLP  
Attorneys for Assignee  
131 South Dearborn Street  
Suite 2400  
Chicago, Illinois 60603-5577  
312-460-5000  
312-460-7000 (fax)